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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,642	04/25/2005	Seung-Hyun Kim	26743U	5782

20529 7590 11/16/2006

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EXAMINER

PALO, FRANCIS T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 11/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/532,642

Applicant(s)

KIM, SEUNG-HYUN

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

New drawings (specifically Figures 9-11, 12a, 12b, 13a, 13b and 14) in compliance with 37 CFR 1.121(d) are required in this application because the reproductions of the photographs preclude an understanding of the instant invention, especially those directed to the structure of the dried peat moss forms having holes and the sealing of such. . Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

In the alternative, drawings and photographs in accordance with the following should be provided:

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

Specification

Applicant is reminded of the proper language for an **abstract** of the disclosure.

The form and legal phraseology often used in patent claims, such as "said," should be avoided.

The language should be clear and concise and in proper idiomatic English.

A substitute **specification** in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required.

The substitute specification filed must be accompanied by a statement that it contains no new matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The **claims** are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors; further, the method recited in **claim-5** is unclear.

Substitute claims in proper idiomatic English are required.

Regarding **independent claims 1, 3 and 4**:

The three independent claims appear to be directed to distinct methods as evidenced by their preambles; under PCT Rule 13.2 and 37 C.F.R. 1.475, only one invention in each category is permitted.

Applicant is entitled under the 371 filing to claim a product, a process of making the product and the use of the product, it is unclear if applicant is intending to claim three distinct methods or a product, a process of making the product and use of the product; in consideration of the *35 USC § 112* rejection discussed above and the indefiniteness of the claims, the examiner is treating the claim set as directed to a product, a process of making the product and use of the product, and applicant in responding to this office action is required to clarify whether three methods are intended or if a product, process and use is intended by way of the replacement claim set.

Further, if applicant is intending three method claims, he will not be afforded a second non-final office action as the three independent claims except for their preambles and claim-3 terminating with "in", are identical recitations as originally filed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or,
in the alternative, under 35 U.S.C. 103(a),
as obvious over **Melvold** (US 3,883,989) 1975.

Regarding independent claim-1:

The steps of mixing peat moss with at least one additional material as listed, binding the mixture with a water-soluble glue, shaping, drying, making a hole for receiving, inserting seed and sealing the hole containing seed is the examiner's interpretation of the claim recitation; it is unclear however what is intended by the step of pressing as claimed in step (d), as according to step (c) the material is now dry. Does applicant intend an intermediate step of preparing an additional mixture for filling said hole containing seed in the dry peat mass?

In consideration of the aforementioned discussion, **Melvold '989** teaches intermixing an aqueous bituminous emulsion with peat moss, drying the mixture and compressing (see Abstract).

Art Unit: 3644

Melvold further teaches nutrients and fertilizer ingredients can be incorporated prior to addition of the binder (col.-7, line-4 thereabout).

Melvold further teaches seed planting holes or recesses can be formed in the bodies during the compression molding operation (col.-4, line-40 thereabout) or cutting or punching a hole after expanding the compressed unit (col.-5, line-20 thereabout) or planting seed directly into the expanded body without pre-forming holes (col.-5, line-16 thereabout).

Melvold further teaches loose peat moss or other planting medium can be filled in above the seeds, such as in holes.

Finally, while Melvold '989 is specific to a bituminous binder, he references his US 3,375,607 patent in the Background of the Invention discussion, which teaches as prior art, the use of a water soluble binder ('607; col.-7, line-68 thereabout) as claimed in step (a) of the instant invention.

In the absence of any stated problems solved by or any advantage obtained by utilizing a water-soluble glue as claimed in the instant invention, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have substituted a water-soluble glue for the '989 bituminous binder as claimed and as taught by Melvold '607, as further such modification is merely an alternate equivalent material performing the same intended function of shape retention.

It is respectfully submitted therefore that Melvold anticipates the instant invention as best can be interpreted from the claim recitation.

Regarding **independent claims 3 and 4**:

As the instant independent claims except for their respective preambles are identical to claim-1 (the concluding term "in" as recited in claim-3 is acknowledged), the discussion above regarding claim-1 is applicable to claims 3 and 4 and therefore relied upon for their rejection on the merits.

Regarding **claim-2**:

The discussion above regarding claim-1 is relied upon.

Melvold is not specific to the seed type as claimed, but rather teaches employment of the wafer-type bodies for starting seeds (col.-4, line-55 thereabout) in general.

In the absence of any stated problems solved by or any advantage obtained by utilizing specific seed type as claimed in the instant invention, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have utilized the ornamental seed species as claimed, as further such modification is merely an alternate equivalent seed material performing the same intended function.

Regarding **claim-5**:

The discussion above regarding claim-4 is relied upon.

As best can be determined from the claim recitation, Melvold recites the use of growing plants in the peat moss wafers; it is well known the operations of potting up or planting out such seedlings produced by the use of pelleted seeds such as taught by Melvold.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ruel '759 teaches treated peat moss agglomerated into spherical shapes or balls with the incorporation of fertilizer.

Jones '785 teaches implanting seed within a peat shaped porous root-permeable support body and commercial production of lettuce grown therefrom.

Warner '165 teaches mycorrhizal peat seed pellets and especially the inclusion of other ingredients such as fungicides, pesticides, trace elements or plant growth assistants (col.-5, line-19 thereabout).

Nilsson '633 teaches embodiments of plant seeds enclosed by a germination improving capsule comprising peat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu.,Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644